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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,735	05/23/2001	Naishin Seki	JA9-2000-0085 (8728-516)	9928
46069 7590 05/05/2008 F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797			EXAMINER DANNEMAN, PAUL	
			ART UNIT 3627	PAPER NUMBER
			MAIL DATE 05/05/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/863,735	<b>Applicant(s)</b> SEKI ET AL.	
	<b>Examiner</b> PAUL DANNEMAN	<b>Art Unit</b> 3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-8 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8 and 20-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |



**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 27 March 2008 has been entered.

***Preliminary Remarks***

2. This Office Action responds to the amendment and arguments filed by applicant on 27 March 2008.

3. The amendment of Claims 1 and 5 by applicant in the reply filed on 27 March 2008 is hereby acknowledged.

4. Applicant did not traverse the examiner's assertion of OFFICIAL NOTICE regarding "Ranking items on the basis of their popularity or evaluations, then setting a price based on the ranking of products listed for sale." therefore this is admitted as prior art.

5. Claim 24 is objected to as being numbered twice. It appears the first recitation of claim "24" should be renumbered as claim 23. For the purposes of this Office action, the first claim 24 has been renumbered as claim 23.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious

at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 1-3, 5-8, and 20-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 2001/0014868) hereafter known as Herz, in view of Freeny, Jr. (US 6,076,071) hereafter known as Freeny, and further in view of Kaminsky et al. (US 2001/0047308) hereafter known as Kaminsky.

9. **Examiner's note:** Examiner has pointed out particular references contained in the prior art of record in the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the **entire** reference as potentially teaching all or part of the claimed invention, as well as the content of the passage as taught by the prior art or disclosed by the Examiner.

Herz shows, in Figure 1, a system for the automatic determination of customized prices and promotions. The primary functions of the system for the automatic determination of customized prices and promotions (price setting means) 100 are:

- 1) To identify offers that are appropriate for each shopper,
- 2) To help the shopper become informed about these available offers (product information provision means), and

- 3) To facilitate any or all of the necessary transactions, such as electronic ordering or payment (retail means), if the shopper decides to accept an offer.

Herz further discloses demographic and/or consumer information about the shopper or similar shoppers is obtained from other databases, e.g., from a consumer database purchased from a credit-card company, or a database that correlates the response to telemarketing campaigns with demographic variables. The main computer selects offers from the offer database that are likely to result in profitable sales (price trend means, basic rule of supply and demand). "Retail sales state" and means for managing it, as vaguely defined in applicant's specification, is shown throughout the reference in demand curves and more specifically on page 32, paragraph [0301], which states, "Time series methods are also useful for detecting trends: one could do a linear regression on sales for a certain product over time, determining the overall direction of a product's sales. This information could be used to adjust offer-generating strategies, as it would indicate a waxing or waning of a customer's overall interest in a given product." But, while the price may be reset and changed with time in Herz's system, it is not specifically disclosed that pricing is dynamically set, at the time the user looks at it, and it is not disclosed that any trend information regarding the pricing is displayed to the user.

However, Freeny in at least Column 3, lines 42-60 discloses a system which receives sales and inventory data and data from other sources to automatically change product prices. Freeny in at least Column 3, lines 66-67 and Column 4, lines 1-13 further discloses that product prices are dynamically adjusted at the checkout station, on message displays within the store, and etc. Freeny in at least Column 7, lines 63-67 and Column 8, lines 1-5 further discloses that the system detects the rate of purchase of each product and compares it to a predetermined limit and the price of each product is automatically adjusted upwards or downwards. Freeny in at least Column 8, lines 6-17 still further discloses that the system can automatically, based on the reduced supply of product, adjust the price of a product. Freeny does not specifically disclose providing the user with any pricing trend information.

Kaminsky in at least paragraph [0020] discloses a system that permits a merchant to dynamically price a single product, a group of products or an entire website. Kaminsky in at least paragraph [0035] and Figure 3 further discloses a user being provided with price trend information.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Herz so as to set the price of a product dynamically as taught by Freeny and to display the price trend information to the user in accordance with the teachings of Kaminsky, in order to generate more sales by urging the buyer to act quickly by giving the sense that the price being offered is a good deal and that it would not last for long.

Regarding ranking the popularity or evaluations of the products, while the pricing in Herz, Freeny and Kaminsky can be set based on the popularity of the items; neither reference specifically discloses ranking the items based on popularity or evaluations of the products. However, ranking items on the basis of their popularity or evaluations, then setting a price based on the ranking of a list of products for sale, is old and well known (Prior Art admitted under OFFICIAL NOTICE). Therefore it would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have further modified the system of Herz so as to rank the items for sale in order of their popularity or evaluations, and set the price in accordance with the rank, as it is well known to do so, in order to generate more revenue by charging higher prices for more popular items.

### ***Response to Arguments***

10. Applicant's arguments with respect to ***Claims 1-3, 5-8, and 20-27*** have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/

Examiner, Art Unit 3627

1 May 2008

/F. Ryan Zeender/

Supervisory Primary Examiner, A.U. 3627